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Title/Style of Cause: Stanley Johan Wilfried Brug v. Suriname  
Doc. Type: Decision  
Decided by: President: Florentin Melendez;  
First Vice-President: Paolo Carozza;  
Second Vice-President: Victor Abramovich;  
Commissioners: Evelio Fernandez Arevalos, Clare K. Roberts, Freddy Gutierrez.  
Dated: 27 July 2007  
Citation: Brug v. Suriname, Petition 1145-03, Inter-Am. C.H.R., Report No. 69/07, OEA/Ser.L/V/II.130, doc. 22 rev. 1 (2007)

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## I. SUMMARY

1. On December 29, 2003, the Inter-American Commission on Human Rights (“the Commission” or “the IACHR”) received a petition, from Mr. Stanley Johan Wilfried Brug (hereinafter “the Petitioner” or “Mr. Brug” or “Brug”), a national of the Republic of Suriname (“Suriname” or “the State”).

2. The Petitioner’s claim arises out of a judgment debt that he has been unable to enforce against the estate of a deceased defendant in the Suriname courts. The petitioner claims he has been unable to enforce this judgment debt against to judicial interference and/or a failure of due process in the Suriname justice system. In this regard, the Petitioner alleges that in or about 2003, after more than 15 years of litigation, Judge Veldama of the First Cantonal Court of Suriname ordered the seizure and sale of property purportedly belonging to the deceased defendant to satisfy the judgment debt owed to the Petitioner. The Petitioner claims that he subsequently attempted to enforce the judgment by seizure and sale of property belonging to the defendants. However, he claims that on October 28, 2003, on the application of the heirs of the deceased defendant, another judge of the court, Judge Ombre, purported to rescind the previous order of Judge Veldama and that there is no available or effective mechanism to challenge Judge Ombre’s order.

3. The Petitioner has not cited particular provision of the American Convention on Human Rights (“the American Convention” or “the Convention”), but complains that the State violated his right to:

- fair trial by an independent and unbiased tribunal

- humane treatment
  - full compensation in case of a final judgment based on miscarriage of justice
  - privacy
  - freedom of speech
  - freedom of movement
  - equality before the law and effective judicial protection
4. The State denies the Petitioner's claims, contending that the Petitioner's petition is inadmissible, inter alia, for failure to characterize any colorable violations, and failure to exhaust domestic remedies.
5. In January 2006, the parties accepted the Commission's friendly settlement offer; however the Commission terminated its involvement in March 2007 when it determined that the matter was not susceptible of resolution by this means.
6. As set forth in this Report, having examined the contentions of the Petitioner and the State on the question of admissibility, the Commission considers the petition to be inadmissible under articles 46 and 47 of the American Convention. The Commission also decides to publish the present report in the Commission's Annual Report to the OAS General Assembly and to notify both parties.

## II. PROCESSING BY THE COMMISSION

7. On December 29, 2003, the Commission received a petition from the Petitioner dated December 22, 2003, which it acknowledged by letter of January 16, 2004.
8. By correspondence of March 01, 2004 and April 22, 2004, the Petitioner submitted further information to the Commission.
9. By letter of June 28, 2004, the Commission requested further information of the Petitioner, and followed this up with a letter to the Petitioner of July 15, 2004. The Petitioner replied by letter of July 22, 2004. The Commission acknowledged the Petitioner's reply by communication of August 04, 2004.
10. By letter of August 20, 2004, the Petitioner submitted further information to the Commission, which was acknowledged by the Commission on August 24, 2004. By communication of August 31, 2004, the Petitioner submitted further information to the Commission. By letter of September 16, 2004, the Commission acknowledged receipt of this communication and requested further information of the Petitioner. The Petitioner submitted further information by communication of October 12, 2004, which was acknowledged by the Commission on October 21, 2004. The Petitioner submitted further information on December 07, 2004, which was acknowledged by the Commission on December 07, 2004. The Petitioner submitted further information to the Commission by letters of December 14, 2004, January 03, 2005 and January 07, 2005.

11. By communication of January 11, 2005, the Commission transmitted the pertinent parts of the Petitioner's complaint to the State of Suriname, requesting a response within two months. By letter of the same date, the Commission informed the Petitioner of this step.

12. By note of February 24, 2005, the State requested an extension of three months to respond. By communication to the State of February 25, 2005, the Commission granted an extension of six weeks, and so informed the Petitioner by letter of the same date. In response to this letter, the Petitioner submitted further observations by letter of March 02, 2005. The Commission acknowledged the Petitioner's letter by communication of March 03, 2005.

13. On April 11, 2005, the Commission received the State's response to the Petitioner's complaint, the pertinent parts of which were transmitted to the Petitioner by letter of April 12, 2005. By note of the same date, the Commission acknowledged receipt of the State's response.

14. By letter of April 13, 2005, the Petitioner submitted further observations to the Commission and by letter of April 18, 2005; the Petitioner requested an extension of time to respond to the State's observations. By letter of May 09, 2005, the Commission granted the Petitioner an extension of 30 days. On May 17, 2005, the Commission received the Petitioner's observations on the State's reply, the pertinent parts of which were transmitted to the State by communication of May 25, 2005. By communications received on July 11, 2005 and July 14, 2005, the Petitioner submitted further information to the Commission.

15. By note of July 15, 2005, the State requested an extension to July 22, 2005 to submit its observations on the Petitioner's submission of April 13, 2005. The Commission granted the requested extension by letter of July 18, 2005, and so informed the Petitioner by letter of the same date.

16. By note of July 22, 2005, the State transmitted its observations on the Petitioner's submission of April 13, 2005. By letters of July 28, 2005 and August 03, 2005, the Commission transmitted the pertinent parts of the State's observations to the Petitioner, requesting a response within a month. By letter of January 03, 2006, the Petitioner submitted additional information to the Commission.

17. By correspondence to both parties of January 05, 2006, the Commission informed both parties that it had decided to make itself available to them with a view to reaching friendly settlement, pursuant to Article 48(1) (f) of the American Convention on Human Rights. By letter of January 10, 2006, the Petitioner accepted the Commission's offer and also submitted additional information. By letter of January 27, 2006, the Commission acknowledged receipt of the Petitioner's additional information and by note of the same date, transmitted the pertinent parts thereof to the State.

18. By communication received by the Commission on February 02, 2006, the State accepted the Commission's friendly settlement offer and submitted further observations. By letter of March 02, 2006, the Commission transmitted the pertinent parts of this communication to the Petitioner.

19. By note of February 23, 2006, the State acknowledged receipt of the Commission's note of January 27, 2006 and requested an extension of three months to reply. By communication of March 06, 2006, the Commission granted an extension to March 27, 2006 for the State to submit its observations.

20. By letter dated March 15, 2006, the Petitioner submitted further observations, the pertinent parts of which were transmitted to the State by note of March 22, 2006.

21. By note of March 22, 2006, the State acknowledged receipt of the Commission's communication of March 06, 2006 and requested a further two weeks to submit the requested observations. By note of March 28, 2006 the Commission granted an extension to April 05, 2006. By note of March 28, 2006, the State submitted observations on the Petitioner's submissions of January 10, 2006, and by communication of April 07, 2006, submitted its observations on the Petitioner's submissions of March 15, 2006. On May 02, 2006, the Commission acknowledged receipt of additional submissions from the Petitioner of March 30, 2006 and April 07, 2006, and by note of the same date, transmitted the pertinent parts thereof to the State.

22. By communications of April 25, 2006 and May 13, 2006, the Petitioner submitted additional information to the Commission. By note of June 01, 2006, the State responded to the Commission's note of May 02, 2005, indicating that it had met with Mr. Brug on May 17, 2006 to facilitate friendly settlement discussions. The State requested an extension of three months to respond to the petitioner's submissions of March 30, 2006 and April 07, 2006. By note of June 12, 2006, the Commission granted an extension of two months. By letters of the same date, the Commission also acknowledged receipt of the Petitioner's communications of April 25, 2006 and May 13, 2006 and transmitted the pertinent parts of the State's response of June 01, 2006.

23. By letter of June 25, 2006, the Petitioner responded to the Commission's communication of June 12, 2006. By communications of July 10, 2006, the Commission acknowledged receipt of the Petitioner's response and transmitted the pertinent parts thereof to the State. By letter of August 02, 2006, the Commission confirmed an earlier telephone communication from the Petitioner to the effect that the Petitioner had met with State officials on May 17, 2006 and that further meetings might be pending.

24. By note of August 10, 2006, the State acknowledged receipt of the Commission's communication of July 10, 2006 and requested an extension of two weeks to respond. By note of August 15, 2006, the Commission granted the requested extension. The State subsequently submitted its observations by note of August 24, 2006, the pertinent parts of which were transmitted to the Petitioner by letter of August 31, 2006. By communication of August 30, 2006, the Petitioner submitted further information to the Commission, and by letters of September 27, 2006 and October 06, 2006, responded to the State's submission of August 24, 2006. By note of October 10, 2006, the Commission forwarded the pertinent parts of the Petitioner's latest observations to the State and requested the State to respond within a month.

25. By letters of November 13, 2006, November 14, 2006, December 11, 2006, and December 15, 2006, the Petitioner submitted further information to the Commission, the

pertinent parts of which were transmitted to the State by note of December 18, 2006. In the same note, the Commission reiterated its request of October 10, 2006. By communication of January 23, 2007, the State requested an extension of one month to respond, which the Commission granted by note of February 07, 2007. By letters of January 18, 2007 and January 25, 2007, February 09, 2007 and February 14, 2007, the Petitioner submitted further information to the Commission.

26. By note of February 22, 2007, the State submitted its response to the Petitioner's submissions of September 27, 2006, October 06, 2006, November 13, 2006, December 11, 2006 and December 15, 2006. By letters of February 28, 2007 and March 16, 2007, the Petitioner submitted further information to the Commission. By letter of March 07, 2007, the State submitted additional information to the Commission.

27. By communications of March 19, 2007 to the parties, the Commission terminated its intervention in the friendly settlement process, and advised that it proposed to continue with the processing of the petition.

### III. POSITIONS OF THE PARTIES

#### A. The Petitioner

28. For more than a decade, the Petitioner, a national of Suriname, has been involved in civil litigation against a Mohamed Gani Rosan, et al, in the Suriname courts. According to the Petitioner he obtained a judgment against Mr. Rosan in November 1992, which attempted to enforce by judicial seizure and sale (of assets belonging to Mr. Rosan) in October 2003. Mr. Rosan died in 2000, and from the time of his death, the litigation was continued against his estate. The Petitioner contends that a Judge Veldema of the Suriname District/Cantonal Court issued writs of attachment on certain moveable and immoveable property, as a result of which these properties were scheduled to be auctioned at a public sale on various dates between October 21 and October 23, 2003.

29. By way of background, the Petitioner obtained a judgment against Mr. Rosan in the Suriname District Court on November 10, 1992, which obliged Mr. Rosan to:

- a. cooperate with the transfer of title to the defendant [Mr. Brug] of 3 plots all being part of the Dordrecht plantation, situated in the district of Commewijne;
- b. realize all facilities undertaken by him, more in particular closed sewer system, pave roads, light, water and telephone connection;
- c. to pay the defendant the sum of Sf500 [Suriname guilders] as a penalty for each day that he fails to comply with the aforesaid sentence.

30. Mr. Rosan subsequently appealed to the High Court of Justice, but his appeal was dismissed on April 03, 1998.

31. Prior to the dismissal of the appeal, the parties appear to have come to some settlement that was recorded on March 04, 1997 before the High Court of Justice. Part of this agreement

required Rosan to compensate Petitioner for all losses, to be assessed by an independent assessor. This assessment was done by Mr. I. R. Goossen, and submitted to High Court of Justice on July 07, 1997. The petitioner claims that he didn't get a copy from the High Court until November 15, 2002. The Petitioner claims that the document represents an enforceable agreement, and that the judgment of High Court represents the 'final legal remedy' in the matter. States that this entitles him to place the matter before the IACHR. However, the Petitioner also states that "the means of appeal in Suriname...have come to an end with the verdict of judge Ombre on October 28, 2003." [FN1]

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[FN1] Page 8 of Petitioner's petition dated December 22, 2003.  
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32. On the application of Mr. Rosan's heir/successors, the Petitioner claims that another District Court Judge, Judge Ombre issued a contrary order on October 28, 2003, enjoining the sale of these properties. The Petitioner contends that this order was unlawful, and had the effect of depriving him of the fruit of the judgment debt. The Petitioner claims that there were no domestic remedies available to him to challenge this order. The Petitioner contends that the action of the Judge Ombre violated his rights under the American Convention on Human Rights, as detailed in the summary.

B. The State

33. The State contends that the petition is inadmissible because:

- a. the petition is premature: the judicial order impugned by the Petitioner was an interim injunction and not a final judgment;
- b. the Petitioner has failed to exhaust domestic remedies;
- c. the petition is manifestly groundless and out of order and fails to characterize a violation; and that;
- d. ultimately, the petition is tantamount to a request to the Commission to exercise 'fourth instance' jurisdiction.

34. By way of background, the State asserts that Mr. Rosan died on April 14, 2000, and that his heirs inherited his estate "without benefit of inventory". According to the State, this meant that the heirs assumed ownership of the estate without any debts incurred by Mr. Rosan prior to his death. Accordingly, the properties identified for seizure and sale belonged to the heirs, and was not amenable to liquidation to satisfy the judgment debt owed by Mr. Rosan to Mr. Brug. The State contends that it was in this context that Judge Ombre issued an interim injunction restraining the sale of the properties. The State further argues that Judge Ombre's order was not a final order, was simply an injunction for a month, during which time both parties were required to take steps to seek a final judgment in substantive proceedings. The State asserts that Mr. Brug took no steps to advance this litigation to a substantive conclusion.

35. The State further contends that it was open to Mr. Brug to appeal Judge Ombre's order to the High Court of Justice, a step, the State argues, Mr. Brug failed to take. Accordingly, the State contends that Mr. Brug failed to exhaust domestic remedies.

36. The State further contends that the petition has failed to present any prima facie violations of the American Convention, and is accordingly "manifestly groundless or obviously out of order", as provided for in Article 47 (d) of the American Convention. In this regard, the State argues that the impugned judicial proceedings took place in accordance with "all applicable provisions of the Surinamese legislation." [FN2] Further, the State alleges that Mr. Brug's petition contains unfounded (and irrelevant) allegations of corruption against State officials, including members of the judiciary.

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[FN2] State's observations of April 01, 2005; para.1.  
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37. The State also contends that the petition represents an attempt to invoke an impermissible "fourth instance" review by the Commission of the proceedings before the Suriname courts. In this respect, the State contends that while the Commission and the Inter American Court on Human Rights are charged with supervising the observance and implementation of human rights instruments, they lack the jurisdiction to review domestic judicial decisions where a petitioner is merely dissatisfied with the outcome of such decisions. The State reiterates that the Petitioner had available domestic remedies that he failed to invoke; thus further undermining the Commission's jurisdiction to review the judicial decisions that aggrieved the Petitioner.

#### IV. ANALYSIS OF ADMISSIBILITY

A. the Commission's competence *ratione personae*, *ratione loci*, *ratione temporis* and *ratione materiae*

38. Upon considering the record before it, the Commission considers that it has the competence *ratione personae* to entertain the claims in the present petition. Suriname is party to the American Convention, having deposited its instrument of accession thereto on November 12, 1987. The Petitioner has *locus standi* to submit petitions to the IACHR, in accordance with Article 44 of the Convention. The petition identifies as the alleged victim Mr Brug, a person, whose rights under the Convention the State of Suriname is committed to respect and ensure.

39. The Commission has competence *ratione loci* to take cognizance of this petition, since it alleges violations of rights guaranteed by the American Convention that purportedly occurred in the territory of a State party.

40. The Commission has competence *ratione temporis*, since the events alleged in the petition took place at a time when the duty to respect and ensure the rights enshrined in the Convention was in force for the State.

41. Finally, the Commission has competence *ratione materiae*, since the petition alleges violations of human rights protected by the American Convention.

42. Accordingly, the Commission finds that it is competent to address the claims raised in the petition.

1. Exhaustion of domestic remedies

43. Article 46(1)(a) of the Convention provides that the admissibility of a petition submitted to the Commission is subject to the requirement that remedies within the domestic jurisdiction be exhausted, in accordance with generally recognized principles of international law. The preamble to the Convention states that it grants international protection to support or complement the protection provided by a State's domestic laws.[FN3] The rule of prior exhaustion of domestic remedies allows the State to resolve the problem according to its internal law before facing an international proceeding, which is particularly valid in the international jurisdiction of human rights.

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[FN3] See second paragraph in fine of the Preamble to the American Convention.

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44. The requirement of prior exhaustion applies when domestic remedies are available in practice within the national system, and would be adequate and effective in providing a remedy for the alleged violation. In this sense, Article 46(2) specifies that the requirement is not applicable when the domestic legislation does not afford due process for the protection of the right in question; or if the alleged victim did not have access to domestic remedies; or if there was unwarranted delay in reaching a final judgment in response to the invocation of those remedies. As indicated by Article 31 of the Commission's Rules of Procedure, when a petitioner alleges one of these exceptions, it then falls to the State to demonstrate that domestic remedies have not been exhausted, unless that is clearly evident from the record. On the matter of burden of proof, the State alleging failure to exhaust domestic remedies must prove that domestic remedies remain to be exhausted and that they are effective[FN4].

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[FN4] See IACHR Report N° 102/06 Petition 97-04 Inadmissibility Miguel Ricardo De Arriba Escolá, Honduras, October 21, 2006 Paras. 26-28; IACHR, Report No. 32/05, Petition 642/03, Admissibility, Luis Rolando Cuscul Pivaral et al. (Persons living with HIV/AIDS), Guatemala, March 7, 2005, paragraphs 33-35; I/A Court H.R., Mayagna (Sumo) Awas Tingni Community Case. Preliminary Objections, *supra* note 3, paragraph 53; I/A Court H.R., Durand and Ugarte Case. Preliminary Objections. Judgment of May 28, 1999. Series C No. 50, paragraph. 33; and I/A Court H.R., Cantoral Benavides Case. Preliminary Objections. Judgment of September 3, 1998. Series C No. 40, paragraph 31.

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45. In this context it is appropriate to clarify the remedies available under domestic law that should be exhausted in each particular case. The Inter-American Court of Human Rights has

indicated that only those remedies that provide appropriate remedy for the violations that are alleged to have taken place should be exhausted. As the Court observed:

Adequate domestic remedies are those which are suitable to address an infringement of a legal right. A number of remedies exist in the legal system of every country, but not all are applicable in every circumstance. If a remedy is not adequate in a specific case, it obviously need not be exhausted. A norm is meant to have an effect and should not be interpreted in such a way as to negate its effect or lead to a result that is manifestly absurd or unreasonable. [FN5]

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[FN5] I/A Court H.R., Velásquez Rodríguez Case. Judgment July 29, 1988, Series C, No. 4, paragraph 64.

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46. In this case, the Petitioner argues that Judge Ombre's order displaced the previous order of Judge Veldama and that Judge Ombre's later order was not amenable to further judicial challenge in Suriname domestic legal system. In any event, the Petitioner argues that he had already obtained a final judgment against Mr. Rosan and that the proceedings initiated by the heirs of Mr. Rosan were duplicative of litigation that had already been concluded. On the other hand, the State contends that Judge Ombre did not constitute a final disposition of the domestic proceedings, but was merely a temporary injunction issued to halt the seizure and sale of properties, given the dispute over whether these properties were part of Mr. Rosan's estate for the purpose of satisfying the judgment debt owed to the Petitioner. According to the State, it was ultimately open to the Petitioner to challenge Judge Ombre's order in the High Court of Justice, but that the Petitioner inexplicably failed to do so.

47. While it appears to the Commission that Judge Ombre's order was at variance with the previous order of Judge Veldama the record before the Commission[FN6] clearly demonstrates that Judge Ombre's order was an interlocutory injunction and not a final judgment. In this regard, the Commission notes that nothing in the documents or information supplied by Mr. Brug indicates any attempt to (a) obtain a substantive resolution of the issues giving rise to the interlocutory injunction; (b) challenge the interlocutory order by appeal to the High Court of Justice of Suriname. In the face of the State's contention that the latter step constituted an available, effective and adequate remedy, the Petitioner has not sought to attribute lack of invocation to ineffectiveness, unavailability or insufficiency. Similarly, the Petitioner has not alleged any circumstances that would exempt him exhausting domestic remedies so as to permit the Commission to intervene.

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[FN6] Particularly the judgment of Judge Ombre (see observations of State of July 22, 2005).

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48. The Commission therefore considers that given the failure to exhaust domestic remedies, the petition lodged by Mr. Brug is inadmissible under Article 46(1) (a). The Commission therefore does not consider it necessary to consider any other criterion of admissibility with respect to this petition.

## V. CONCLUSION

49. The Commission concludes that it is competent to examine the allegations of the Petitioner in accordance with Articles 46 and 47 of the American Convention, with respect to alleged violations of the rights enshrined in the American Convention.

50. The Commission however concludes that the claims raised in the petition are inadmissible because of failure to pursue and exhaust domestic remedies in accordance with the generally recognized principles of international law as required under Article 46 of the American Convention and Article 31 of the Commission's Rules of Procedure.

51. Based on the factual and legal arguments set forth above,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the petition under consideration inadmissible with respect to the alleged violations of the American Convention.
2. To notify the parties of this decision.
3. To publish this decision and include it in the Commission's Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 27th day of the month of July, 2007.  
(Signed): Florentín Meléndez, President; Paolo G. Carozza, First Vice-President; Víctor E. Abramovich, Second Vice-President; Evelio Fernández Arévalos, Clare K. Roberts and Freddy Gutiérrez, Commissioners.